IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.3086 of 2003

Union of India
Ministry of Law and Justice & ors. ... Petitioners
(Orig. Respondents)

Versus

Shri Arun Waman Waradkar. ... Respondent

Mr.K.R. Choudhari, Senior Advocate with Mr.Vinod Joshi with Ms.Lata B. Patne with Mr.Y.R.Mishra and Mr.D.A. Dube for Petitioner.

Mr.S.P. Inamdar for Respondent.

W I T H

Writ Petition No.803 of 2005

Shri Arun Waman Waradkar. ... ... Petitioner

V/s.

1. The Union of India through
the Director of Postal Services,
O/o the Postmaster General
Goa Region, Panjim & ors. ... ... Respondents

Mr.S.P. Inamdar for Petitioner.

Mr.K.R. Choudhari, Senior Advocate with Mr.Vinod Joshi with Ms.Lata B. Patne with Mr.Y.R.Mishra and Mr.D.A. Dube for Respondents.

CORAM : SMT.RANJANA DESAI &

SMT.ROSHAN DALVI, JJ.

Date of reserving the judgment : 5th December 2007
Date of pronouncing the judgment : 17th December 2007

JUDGMENT : (Per Smt.Roshan Dalvi, J.)

1. In both the above Petitions, the order of Central Administrative Tribunal, Mumbai Bench, Mumbai, (CAT) dated 29.11.2002 has been impugned. The first Petition i.e. Writ Petition No.3086 of 2003 is filed by the Union of India. The second Petition i.e. Writ Petition No.803 of 2005 is filed by the Government employee (Petitioner) who was provisionally appointed as a Post Master for 6 months from 9.11.2000 or till regular appointment was made, whichever period is shorter.

2. The Union of India has challenged the order granting pay and allowances for the period in which the Petitioner did not put in his services. The Petitioner has challenged the order refusing reinstatement.

3. The Petitioner was appointed under the appointment order, Exhibit R-1 annexed to the Petition, titled “Provisional Appointment Order”. The Petitioner's services were terminated on 20.12.2001 by an oral order. Seven months thereafter on 14.7.2002 a regular appointment in the said

post came to be made The Petitioner challenged the said order in the CAT. Under the impugned order of CAT, the Petitioner has been refused reinstatement. However, he has been directed to be paid certain pay and allowances due to him for the intervening period between 20.12.2001 and 14.7.2002 when the post stood vacant. During this period, the Petitioner had not served as Post Master.

4. This case is squarely covered by a judgment in the case of ***Secretary, State of Karnataka & ors. vs. Umadevi & ors.*** **(2006) 4 Supreme Court Cases 1**, which has been later followed by the Apex Court itself in the case of ***Surendraprasad Tiwari vs. U.P. Rajya Krishi Utpadan Mandi Parishad*** **(2007) 1 All MR 461**. Following upon the aforesaid two judgments, which held, inter alia, that the temporary employees do not have a right to any permanent public employment and cannot be reinstated in service, this court has, by its order dated 7th December 2007 in **Civil Writ Petition No.614 of 2003 in the case of *Shri P.R. Nair & ors. vs. Union of India & anr.*** also refused to reinstate or to grant permanency to temporary employees not appointed by the Government by following the procedure established by law.

5. Consequently, the refusal to reinstate under the impugned

order cannot be challenged and interfered with. The later part of the impugned order contained in paragraph 8 thereof allows pay and allowances to be paid by the Government to the Petitioner (Applicant therein) for the seven-month period, during which the permanent employee was not appointed by the Government under the procedure prescribed by law. Admittedly, the Petitioner had not put in service during that period. There is, therefore, no question of giving him salary for the period he did not serve the Government. That part of the order is, therefore, required to be set aside.

6. However, we are told that the Petitioner was appointed Post Master in his village by the Government utilizing his property for being used as post office. We are also told that the Government had paid him a paltry sum of Rs.100/- as compensation for the use of his premises which appears to be not reasonable. In the peculiar circumstances of the case, the Government may consider treating the pay and allowances, which were held due to him under the impugned order for the period from 20.12.2001 to 14.7.2002, as compensation for use of his premises without prejudice to all their rights and contentions and without treating it as a precedent.
7. Consequently, Writ Petition No.803 of 2005 is dismissed. Rule stands discharged.

8. So far as Writ Petition No.3086 of 2003 is concerned, it is partly allowed. The impugned order of the CAT so far as it refuses reinstatement is confirmed. However, direction issued by the CAT to the Government to pay salary and allowances to Shri Arjun Waradkar contained in paragraph 8 is set aside. The Government may consider treating the pay and allowances, which were held due to him under the impugned order for the period from 20.12.2001 to 14.7.2002, as compensation for use of his premises without prejudice to all their rights and contentions and without treating it as a precedent. We make it clear that we have made this observation in the peculiar facts and circumstances of the case. However, the Government may take decision independently.

9. Both the writ petitions stand disposed of accordingly.

(SMT.RANJANA DESAI, J.)

(SMT.ROSHAN DALVI, J.)